

to provide INP using RCF and DID. Once federal and state proceedings fully defined the form of Permanent Number Portability, SWBT will implement that service. SWBT will implement its Permanent Number Portability on a Metropolitan Statistical Area basis in accordance with the schedule set forth in the FCC Number Portability Order. DEBRAH BAKER-OLIVER, INITIAL, P. 2-3. TELECOMMUNICATIONS ACT OF 1996, 271(c)(2)(B)(xi).

2. What method should be used to price interim number portability and what specific rates, if any, should be set for SWBT?

SWBT's Position: The cost to provide INP should be recovered from the LSPs requesting such service. However, the FCC Number Portability Order concludes that INP should be recovered from all telecommunications carriers on a competitively neutral basis. Should the cost recovery method set forth in the FCC Order remain, SWBT recommends that this cost sharing method be implemented by using elemental access lines (EAL) as a basis to allocate costs among all telecommunications carriers. Each carrier should be assessed a standardized EAL charge to its end user customers. Pending a decision on the Number Portability Order the Arbitrator should require all providers of INP to track all costs associated with INP. If the FCC Number Portability Order is modified, the providers of INP services should directly bill the LSPs for the INP services provided on a true up and accrual basis. DEBRAH BAKER-OLIVER, INITIAL, P. 4, 7-10.

3. What is the appropriate cost recovery mechanism for interim number portability?

SWBT's Position: See SWBT's Position on preceding issue.

IX. DIALING PARITY AND ACCESS TO NUMBERING RESOURCES

1. Should SWBT provide local dialing parity?

SWBT's Position: SWBT has and will continue to provide non-discriminatory access to numbers as long as it remains involved in the number administration process. SWBT will not require AT&T's customers to dial any more digits than SWBT's

customers for local and interLATA calls. IntraLATA dialing parity will be provided simultaneous with SWBT's provision of in region InterLATA services. WILLIAM DEERE, INITIAL, P. 111-116.

X. ACCESS TO POLES, DUCTS, CONDUITS, AND RIGHTS-OF-WAY

1. Should the terms "conduit" and "conduit system" include central office vaults, controlled environmental vaults, and other SWBT facilities which may be connected to SWBT's conduit? [SAME AS NOS. 33, 34]

SWBT's Position: No. Facilities such as central office vaults and controlled environmental vaults which are "connected to" SWBT's conduit rather than "part of" the conduit itself should not be considered to be subject to the Pole Attachment Act unless the Pole Attachment Act is amended to include them. AT&T has agreed that central office vaults are not included in the terms "conduit" and "conduit system." T. 1161.

2. Should the term "cost" be defined in the Poles, Conduits and Rights-of-Way Appendix, and should it be defined as AT&T proposes?

SWBT's Position: Since approximately 1978, local exchange carriers subject to the Pole Attachment Act have, subject to FCC guidance, dealt with issues relating to permissible costs, charges, and accounting practices under the Act. As required by the Telecommunications Act of 1996, the FCC will address these issues in the near future. SWBT further submits that the provisions in its proposed master agreement, including Appendix I, dealing with costs and charges are in compliance with the Pole Attachment Act. JAMES HEARST, REBUTTAL, P. 23.

3. Before SWBT transfers its interest in property to which AT&T has attached facilities, must the transferee agree to be bound by the terms of the Poles, Conduits, and Rights-of-Way Appendix? [SAME AS NO. 41]

SWBT's Position: No. The Pole Attachment Act requires utilities to provide access to the poles, ducts, conduits, and

rights-of-way they own or control. The Act does not require that they retain ownership or control of facilities which they no longer need for their own purposes. Nothing in the Telecommunications Act of 1996, the Pole Attachment Act, or the FCC's First Report and Order purports to preclude a utility from transferring title to poles, ducts, conduits, or rights-of-way.

If SWBT were to transfer poles, ducts, conduits or rights-of-way to another LEC or utility, access to the transferred poles, ducts, conduits, or rights-of-way would remain subject to the Pole Attachment Act, and AT&T should enter into an appropriate agreement with the new owner for continued access.

Similarly, if SWBT were to abandon poles, ducts, conduits, or right-of-ways of way located on public or private property, AT&T should enter into an appropriate agreement with the property owner for continued access. JAMES HEARST, REBUTTAL, P. 24.

4. Will AT&T be granted nondiscriminatory access to poles, conduits, or rights-of-way in which dark fiber or unused four-wire copper cable are located?

SWBT's Position: **ISSUE RESOLVED.** SWBT's proposed master agreement deals with this issue. AT&T will have access to all poles, ducts, conduits, or rights-of-way subject to the Pole Attachment Act. JAMES HEARST, REBUTTAL, P. 24. T. 1040.

5. Will AT&T be permitted to use leak detection liquids or devices, or cable lubricant, that are approved by Bellcore?

SWBT's Position: **ISSUE RESOLVED.** AT&T has agreed to use leak detection liquids or devices, or cable lubricant that are approved by SWBT on the condition that SWBT provide AT&T with a preapproved list with periodic updates. SWBT believes that it should maintain control over the leak detection liquids and devices and cable lubricants utilized in its conduit system. JAMES HEARST, REBUTTAL, P. 24; T. 1041.

6. May SWBT relieve itself of liability it would otherwise have under applicable environmental laws for presence of

environmental contaminants in its conduit facilities by allowing AT&T to perform tests for contaminants at AT&T's expense or requiring AT&T to make its own determinations regarding the presence of contaminants? [SAME AS NO. 52]

SWBT's Position: SWBT has, in its proposed master agreement, requires that AT&T and other parties comply with applicable environmental laws. Nothing contained in SWBT's master agreement relieves SWBT of its responsibility to comply with those same laws. SWBT, however, maintains that ultimate responsibility for assuring safety is on the workers at the site.

SWBT notes that AT&T proposes to delete subsections (a), (c), (d), and (e) of Section 6.14 from the SWBT Master Agreement. These provisions are intended to insure safe work practices are followed on SWBT's conduit sites. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

7. Must SWBT notify AT&T of any known environmental hazards at a site for which AT&T has submitted an application for access to poles, ducts, conduits, or rights-of-way?

SWBT's Position: Although disclosure of environmental hazards is not a subject addressed by the Telecommunications Act of 1996 or the Pole Attachment Act, SWBT is willing to disclose known environmental hazards as part of its response to AT&T's application. SWBT does not believe that it is necessary or desirable to complicate the application process by inserting in the middle of the application process a separate 20-day environmental hazard response and does not agree to AT&T's proposed §9.06. JAMES HEARST, REBUTTAL, P. 27.

8. Should charges for newly licensed pole attachments and conduit occupancy be prorated to reflect the date the attachment or occupancy actually occurred, rather than requiring AT&T to pay in six-months blocks regardless of the actual date of attachment of occupancy?

SWBT's Position: Precise proration of charges is administratively cumbersome and unnecessary given the magnitude of the charges involved and AT&T's ability to

control the timing of its usage of SWBT's facilities. Proration, of course, requires starting and ending dates. Under SWBT's proposed master agreement, neither SWBT nor any party other than AT&T may utilize space assigned to AT&T, whether the space assignment occurs before AT&T formally applies for the space or is made as part of the application process. The date of attachment or actual physical occupancy should be irrelevant. The critical date should be the date of the space assignment itself. Prorations may, in theory, be handled in any of a variety of ways. Prorations may be annual, semi-annual, monthly, weekly, daily, etc. SWBT has used semiannual prorations for years. SWBT's proration practices have not been determined by the FCC to be inappropriate. SWBT believes that its current proration practices are reasonable and reflect a fair accommodation of interests involved. The issue of proration will, undoubtedly, be addressed by the FCC in the near future. There is no need to address it now in the context of this interconnection arbitration proceeding. **JAMES HEARST, REBUTTAL, P. 27.**

9. What procedures/process must AT&T follow before placing a cable on/in a pole, duct, conduit, or right-of-way that is under the ownership or control of SWBT?

SWBT's Position: AT&T should follow the same orderly procedures which apply to the many firms which will have access to SWBT's poles, ducts, conduits, and rights-of-way. AT&T should select the space it wants and that space should be made available to AT&T as provided in SWBT's proposed master agreement. Per the FCC, SWBT has a maximum of 45 days, to either grant access or explain in detail why access is being denied. If aggrieved by a SWBT decision, AT&T may immediately complain to the FCC or pursue such other remedies as may be available to AT&T. AT&T's suggestion that it (and presumably all other telecommunications carriers and cable system operators) should be able to examine records, take whatever space they believe is available, and modify SWBT's facilities at will in accordance with its own view of proper engineering practice is an invitation to chaos and inconsistent with the overall FCC guidelines. **JAMES HEARST, REBUTTAL, P. 28.**

10. Should the statement of purpose in the Poles Appendix include a statement that SWBT will provide AT&T with

"nondiscriminatory access" to poles, ducts, conduits, or rights-of-way owned or controlled by SWBT as provided in the Telecommunications Act of 1996? [SAME AS NO. 26]

SWBT's Position: It is not necessary to include language referring specifically to "nondiscriminatory access" in the statement of purpose. SWBT's proposed text reads: "The primary purpose of this Agreement is to set forth the basic rates, terms, conditions, and procedures under which Applicant will have access to poles, ducts, conduits, and rights-of-way owned or controlled by SWBT in accordance with the Pole Attachment Act." SWBT's language is fully sufficient to embrace the concept of "nondiscriminatory access." JAMES HEARST, REBUTTAL, P. 29.

11. Is AT&T an "authorized contractor" for purposes of performing work on or within poles, conduits, and rights-of-way, and may AT&T perform work itself as an authorized contractor as stipulated in Texas? [SAME AS NOS. 32, 47]

SWBT's Position: SWBT's proposed master agreement will be applicable to a wide variety of telecommunications carriers and cable system operators. SWBT's proposed definition of "authorized contractor" contemplates that many, but not all, of the companies seeking access to SWBT's poles, ducts, conduits, and rights-of-way will qualify as "authorized contractors." Section 3.06 states: "The term 'authorized contractor' includes Applicant if Applicant is approved as an authorized contractor pursuant to Section 10.05 of this Agreement." AT&T should have no difficulty being recognized as an "authorized contractor."

The concept of an "authorized contractor" in Texas was based on agreement between the parties. For most kinds of make-ready work, the parties would mutually agree on contractors who would be able to perform make-ready work if SWBT could not perform the work within the time periods requested by AT&T. Recognition of AT&T as an "authorized contractor" able to perform most kinds of make ready-work does not imply that AT&T should be authorized to perform all kinds of make-ready work. JAMES HEARST, REBUTTAL, P. 29.

12. May SWBT interfere with AT&T's pole attachment, right-of-way, or conduit occupancy use rights provided in the Poles, Conduits and Rights-of-Way Appendix, or with AT&T's right to conduct normal business operations in serving its customers? [SAME AS NO. 42]

SWBT's Position: **ISSUE RESOLVED IN PRINCIPLE.** SWBT's proposed agreement makes it clear that SWBT may not interfere with AT&T's rights. Nevertheless, SWBT and AT&T have agreed to develop language acceptable to both parties in AT&T's proposed subsection 4.05. **JAMES HEARST, REBUTTAL, P. 29. T. 1042.**

13. Must AT&T provide five working days' notice before entering SWBT's conduit system to perform non-emergency work operations, or may AT&T provide 48 hours notice as ruled by the Public Utility Commission of Texas, especially where AT&T has agreed to provide ten (10) working days' notice as a courtesy when feasible? [SAME AS NO. 50]

SWBT's Position: The Texas PUC required AT&T to give SWBT 48 hours advance notice before "LSP personnel, certified based on industry standards, perform *installation, maintenance and similar routine work* at SWBT sites...." (Italics added.) The parties, through negotiation, agreed to extend the two-day notice rule to cover additional kinds of non-emergency work operations and to eliminate restrictive references to "LSP personnel, certified based on industry standards." Further, despite the Texas Commission ruling, SWBT is not requiring advance notice with respect to SWBT sites other than manholes. Due to operational and ordinary work routines, SWBT is purposing 5 working days notice as general rule. SWBT has amended Section 6.11(c) to state that the parties contemplate that Applicant may need to perform operations in SWBT's conduit system other than during normal business hours and may occasionally require access to manholes on shorter notice than contemplated. In such cases, access is to be provided on shorter notice. **JAMES HEARST, REBUTTAL, P. 29-30. T. 1190-1191.**

14. Must AT&T pay for an employee of SWBT to observe construction work where the work is being done by a contractor which has

been approved by SWBT, or where the work is performed by qualified AT&T personnel? [SAME AS NO. 50]

SWBT's Position: In Section 6.11(e), SWBT has proposed that AT&T pay for the costs of construction observers "When an authorized employee or representative is present as a construction observer..." It is quite reasonable for SWBT to require construction observers at sites where work operations are being performed which could jeopardize the integrity or security of SWBT's facilities or network functioning. SWBT further believes that it is appropriate that the cost causer (in this case AT&T) bear the reasonable costs of such construction observers.

SWBT's proposals in Texas were similar. Recognizing that SWBT had legitimate interests in sending construction observers to some construction sites, the Texas PUC determined that the general rule should be that AT&T and SWBT should split the costs of construction observers equally. This result would discourage SWBT from sending unnecessary construction observers to the work site. JAMES HEARST, REBUTTAL, P. 30-31.

15. May AT&T request permission to inspect SWBT's pole and conduit maps and records, cable plat maps, or other plant location records on two business days' notice as stipulated in Texas, or must AT&T wait ten (10) business days to review records? [SAME AS NO. 55]

SWBT's Position: Under SWBT's proposed master agreement, AT&T and its planners will have access to SWBT's pole and conduit records, days, weeks, months, and even years in advance of undertaking construction activities. SWBT does not condition access to records on the submission of any kind of application for access to specific poles, ducts, conduits, or rights-of-way.

Due to the nature and competitive sensitivity of material contained in SWBT's records, SWBT cannot simply provide AT&T and others free access to records relating to SWBT's poles, ducts, conduits, and rights-of-way. Moreover, the records in question are working records which are used by SWBT personnel on a day-to-day basis in the course of performing their everyday work operations. Providing records access,

therefore, is a substantial interference with SWBT's ordinary work operations. Granting access to records requires manpower commitments on SWBT's part and advance scheduling for records access. SWBT believes that under present conditions, 10 business days notice for access to records will be ordinarily be reasonable, especially for planning purposes. SWBT's proposed master agreement, however, also provides for expedited access to records in those cases in which AT&T needs access to records on shorter notice. SWBT believes such provision reaches an appropriate balance between SWBT's scheduling needs and AT&T's need for access to records on short notice. JAMES HEARST, REBUTTAL, P. 31-32. T. 1195.

16. May SWBT require advance payment of the full amount of the estimated cost of modifying its outside plant for AT&T's access, or may AT&T pay half of the cost after the work is 50% complete, and the remainder at completion, as ruled by the Public Utility Commission of Texas?

SWBT's Position: Advance payment for work performed by SWBT as a result of AT&T's requests for access is reasonable and appropriate. SWBT should not subsidize AT&T or other firms by bearing costs in advance and recovering those costs in arrears. The method proposed by SWBT has been used by SWBT for years. To date, the FCC has not disallowed this practice as implemented by SWBT. Indeed, advance payment is fully consistent with the FCC's "cost causer pays" principles. JAMES HEARST, REBUTTAL, P. 32.

17. May AT&T be reimbursed on a pro-rata basis by parties benefiting from modifications for which AT&T has paid, and must SWBT establish a methodology for reimbursement, as ruled by the Public Utility Commission of Texas? [SAME AS NO. 65]

SWBT's Position: The FCC's First Report and Order states that telecommunications carriers and cable system operators who bear the initial costs of expanding capacity should be reimbursed if others utilize the additional capacity created at their expense. SWBT recognizes this principle. SWBT's proposed Section 10.08 thus states in part:

If SWBT utilizes additional space or capacity created as a result of make-ready work performed at Applicant's expense,

SWBT will reimburse Applicant on a pro-rata basis for its share, if any, of the make-ready expenses in accordance with applicable FCC rules. If any third party later utilizes any such additional space, SWBT shall, at the request of Applicant or such third party, provide such information as may be available to SWBT to assist Applicant and such third party in determining the amount, if any, which such third party may owe the Applicant as its pro-rata share of such make-ready expenses.

Mr. Keating states that the Texas PUC's requirement that SWBT establish a methodology for reimbursement is appropriate "because SWBT will be the only party in possession of all applications and records relating to the use of space affected by the modification." This statement is not correct. There will be many situations in which make-ready work resulting in capacity expansions is performed directly by AT&T at AT&T's expense. AT&T will have the most complete information as to the expenses it incurred with respect to capacity expansions and AT&T is, of course, only entitled to reimbursement for the expenses it has itself incurred, less depreciation as required by the FCC. SWBT's obligation is to pay AT&T whatever SWBT owes AT&T and to provide AT&T such information as AT&T may from time-to-time need to substantiate its claims against third parties. SWBT is not required the Pole Attachment Act to collect funds for AT&T and does not want to position itself to deny a third party access to poles, ducts, conduits, or rights-of-way based on AT&T claims of rights to reimbursement. Any such dispute would be between AT&T and the third party or parties involved. JAMES HEARST, REBUTTAL, P. 32-33.

18. If AT&T is willing to perform make-ready work proposed by SWBT, and SWBT agrees that AT&T may perform the work, must AT&T perform the work "in accordance with SWBT's plans and specifications?" [SAME AS NO. 63]

SWBT's Position: If AT&T performs make-ready work in those situations when SWBT is unable to perform the work in time to meet AT&T's scheduling needs, there is no reason why the work should be done differently simply because it is being performed by AT&T or its selected contractors rather than SWBT's. The facilities are SWBT's, and the work should be performed according to SWBT's specifications. Allowing AT&T

or its selected contractors to perform the work is not a requirement of the Pole Attachment Act. It is an accommodation to AT&T. JAMES HEARST, REBUTTAL, P. 33.

19. Must AT&T bear all expenses for emergency repairs it has not authorized?

SWBT's Position: **ISSUE RESOLVED IN PRINCIPLE.** If AT&T does not believe that emergency repair charges assessed by SWBT are appropriate or believes that SWBT has in bad faith failed to give notice when it should have done so, AT&T should contest the charges through the appropriate dispute resolution procedure. These issues can be dealt with on a case-by-case basis. SWBT and AT&T have agreed to draft language wherein SWBT agrees to notify AT&T of emergency repairs as time and circumstances permit, and AT&T reserves the right to challenge any costs billed to AT&T for such repairs. Both parties also agree that the word "any" used before emergency repairs will be stricken. JAMES HEARST, REBUTTAL, P. 34. T. 1043.

20. Must SWBT provide cost justification for the administrative fees it proposes to charge?

SWBT's Position: **ISSUE RESOLVED.** In Texas, AT&T raised the cost justification issue with respect to the one-time contract administration fee of \$250. That fee would be paid one time -- at the time the contract was executed. To the extent that cost justification for administrative fees is required, such cost justification should be determined in FCC proceedings according to FCC rules in accordance with the Pole Attachment Act. In the meantime, SWBT's administrative charges should be approved as stated in SWBT's proposed master agreement and Appendix I. AT&T agrees that this issue should be resolved by the FCC. JAMES HEARST, REBUTTAL, P. 34. T. 1045-1046.

21. Should the Poles, Conduits and Rights-of-Way Appendix, which is part of the Interconnection Agreement between SWBT and AT&T, contain provisions regarding performance and payment bonds, indemnification, assignment of rights, waiver, effective date, dispute resolution, and general legal

provisions that are different from the Terms and Conditions of the Interconnection Agreement addressing the same subjects?

SWBT's Position: SWBT is required to offer the same terms and conditions for access to poles, conduits, ducts, and rights-of-way to any and all telecommunications carriers and CATV firms without regard to an Interconnect agreement or not. Therefore, SWBT recommends that all language in articles 20 through 32 remain in the master agreement. JAMES HEARST, REBUTTAL, P. 34-36.

22. What compensation should SWBT receive for AT&T's use of its poles, ducts, conduits or rights-of-way?

SWBT's Position: Due to the utilization of the mandated FCC formula in factoring rates for pole attachments and conduit occupancy, annual rates do in fact vary from state to state. The correct pole attachment and conduit occupancy 1997 rates for Arkansas are as follows: Per pole attachment \$2.35 annually, Per duct foot \$0.40 annually. Make-Ready work should be estimated and executed to meet SWBT's requirements in providing applicant's space available to insure that the integrity of SWBT's structure meets safety, reliability, or engineering concerns. JAMES HEARST, REBUTTAL, P. 8.

23. Should a license agreement be required before SWBT will grant access to Poles, Ducts, Conduits, and ROW?

SWBT'S Position: **ISSUE RESOLVED.** Yes. SWBT's licensing procedures are an appropriate means of assuring the orderly, non-discriminatory provision of access to SWBT's poles, ducts, conduits and rights-of-way to all CATV operators and telecommunications carriers. By using the proposed licensing process, SWBT can readily provide access on a practical and expeditious manner. AT&T has agreed to withdraw its opposition to this issue. AT&T agrees that some form of a license agreement is needed. JAMES HEARST, REBUTTAL, P. 20-22. T. 1046.

24. Should SWBT be required to provide access to its poles, ducts, conduits, and rights-of-way and under what rates, terms, and conditions?

SWBT Position: The Telecommunications Act of 1996 requires that SWBT, as an incumbent LEC, provide access to its poles, ducts, conduits, and rights-of-way in accordance with the Pole Attachment Act. Congress has directed the FCC to establish new regulations to govern the charges for pole attachments used by telecommunications carriers. Until those new regulations become effective, the rates which SWBT and other utilities may charge are to be determined in accordance with the same statutes and regulations applicable to cable system operators, as provided in 47 U.S.C. § 224(d).

25. Does SWBT's proposed Master Agreement for Access to Poles, Ducts, Conduits, and Rights-of-Way comply with the Pole Attachment Act and applicable FCC rules, regulations, and guidelines and, if not, what changes should be made in the proposed Master Agreement to conform to the applicable federal laws?

SWBT Position: SWBT's proposed Master Agreement complies with the Pole Attachment Act and applicable FCC rules, regulations, and guidelines. No changes are required. Attachment DCK-2 to the Rebuttal Testimony of AT&T witness Daniel C. Keating, III consists of seven pages itemizing language in SWBT's proposed Master Agreement that AT&T does not agree to. Notwithstanding AT&T's lack of agreement on some issues, the proposed Master Agreement should be approved as submitted by SWBT unless it is determined that the Master Agreement is not in accordance with applicable federal law. In this regard, the FCC has established a complaint process to insure that any carriers, including AT&T, which do not feel that access is being provided in full accordance with the law are able to obtain an expedited resolution of that issue by the FCC. JAMES HEARST, REBUTTAL, P. 37.

26. What changes, if any, should be made to Section 2.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Primary Purpose of Agreement" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

27. What changes, if any, should be made to Section 2.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Effect on Rights and Remedies Under Law" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

28. What changes, if any, should be made to Section 2.03 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Interim Agreement" and is in full accordance with the Pole Attachment Act. This section contemplates that the FCC will follow the Congressional mandate and will promulgate new rules, regulations, and guidelines in this area. This section contemplates that as the applicable laws and regulations change, the agreement should be adjusted to conform to the law. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

29. What changes, if any, should be made to Section 2.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Relationship, if Any, to Interconnection Agreement" and is in full accordance with the Pole Attachment Act. Essentially, this section has the effect of insuring that parties seeking access to SWBT's poles, ducts, conduits, and rights-of-way will be treated in the same manner whether they sign the Master Agreement as a stand alone agreement or as part of a broader interconnection agreement. To insure equality of treatment and consistency in application, this provision provides that the terms of the Master Agreement shall apply in the event of a conflict with the main interconnection agreement except as otherwise specifically stated in the interconnection agreement itself. Nothing in this section is inconsistent with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

30. What changes, if any, should be made to Section 3.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "Agreement" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

31. What changes, if any, should be made to Section 3.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "Appendix" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

32. What changes, if any, should be made to Section 3.06 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "Authorized Contractor" and is in full accordance with the Pole Attachment Act. The concept of "authorized contractor" is not required by federal law. SWBT's proposed Master Agreement goes well beyond the requirements of federal law by accommodating the requests of AT&T and others for permission to make modifications to SWBT's facilities in certain circumstances. There is nothing unlawful about permitting the term "authorized contractor" to include AT&T or other firms approved by SWBT. Once SWBT approves the concept of "authorized contractor," SWBT is in no position to deny AT&T or other qualified LSPs recognition as authorized contractors except for demonstrably good reasons. SWBT fully expects AT&T to be approved as an authorized contractor promptly upon AT&T's request for such approval. JAMES HEARST, REBUTTAL, P. 29.

33. What changes, if any, should be made to Section 3.08 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "conduit" and is in full accordance with the Pole Attachment Act. The definition begins with the statement that the term "conduit" refers to all conduits subject to the Pole Attachment Act. It is SWBT's position that facilities such as central office vaults and controlled environment vaults, which may be attached to SWBT's conduit system, are not part of the conduit system itself and other SWBT facilities, such as cables, which are housed in SWBT's conduits are not conduits simply because they are located within a conduit structure. JAMES HEARST, REBUTTAL, P. 18.

34. What changes, if any, should be made to Section 3.10 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "conduit system" and is in full accordance with the Pole Attachment Act. See the discussion above of Section 3.08. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

35. What changes, if any, should be made to Section 3.11 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "duct" and is in full accordance with the Pole Attachment Act. The definition begins with the statement that the term "duct" includes all ducts subject to the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

36. What changes, if any, should be made to Section 3.19 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "make-ready work" and is in full accordance with the Pole Attachment Act. The last sentence of this definition states that "As used in this Agreement, the term 'make-ready work' also includes associated planning and engineering work required to verify or determine the extent of make-ready work required to perform make-ready projects." This sentence reflects that

design is part of the make-ready process. Someone must design the make-ready work to be performed on SWBT's facilities. If AT&T proposes make-ready work and the proposal includes adequate design work, SWBT need only perform minimal additional work to verify that AT&T's design meets SWBT's standards. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

37. What changes, if any, should be made to Section 3.25 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "pole" and is in full accordance with the Pole Attachment Act. The definition begins with the statement that the term "pole" includes all poles subject to the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

38. What changes, if any, should be made to Section 3.26 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "pole attachment" and is in full accordance with the Pole Attachment Act. It should be noted that Appendix I narrows the definition of "pole attachment" for billing purposes by stating that "For billing purposes, a single pole attachment includes the point of attachment and all facilities located in the usable space on the pole six inches above and six inches below the point of attachment, together with routine ancillary apparatus such as anchors, anchor/guy strands, drop wire drive rings and J-hooks, and other apparatus which does not interfere with the ability of SWBT to occupy or assign usable space on the pole other than the usable space licenses to Applicant." In general, SWBT's expects most carriers to have only one billable pole attachment per pole even though there are many attachments to the pole. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

39. What changes, if any, should be made to Section 3.30 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "rights-of-way" and is in full accordance with the Pole Attachment Act. The definition begins with the statement that the term "rights-of-way" includes all rights-of-way subject to the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

40. What changes, if any, should be made to Section 3.34 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section defines the term "strand" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

41. What changes, if any, should be made to Section 4.03 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "No Effect on SWBT's Right to Convey or Transfer Property" and is in full accordance with the Pole Attachment Act. Neither the Pole Attachment Act nor the regulations implementing the Act preclude SWBT from conveying or transferring property simply because another firm has elected to place its facilities on that property. Any limitations on SWBT's property rights would have to be established by statute or regulation. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

42. What changes, if any, should be made to Section 4.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "No Effect on SWBT's Rights to Manage Its Facilities" and is in full accordance with the Pole Attachment Act. To the extent that there any such effects, they exist by virtue of the applicable statutes and regulations and not by virtue of the contract. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

43. What changes, if any, should be made to Section 4.06 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Required Franchises, Permits, Certificates, and Licenses" and is in full accordance with the Pole Attachment Act. Again, the Master Agreement does not impose new requirements on AT&T and other LSPs. It simply states that the contract does not relieve them of whatever obligations they have. That is not to state that anything in the Agreement precludes AT&T or other LSPs from asserting that other provisions of the law exempt them from obtaining otherwise required franchises, permits, certificates, and licenses. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

44. What changes, if any, should be made to Section 5.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Public Rights-of-Way" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

45. What changes, if any, should be made to Section 5.04 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Access to Rights-of-Way Incident to the Use of CEVs and Similar Structures" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

46. What changes, if any, should be made to Section 6.03 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Infrequent Construction Techniques and Connectivity Solutions" and is in full accordance with the Pole Attachment Act. This section is an accommodation enabling AT&T and other LSPs to utilize specified construction methods which are highly disfavored by SWBT for its own operations. In some areas, however, SWBT

has used some of these construction methods. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

47. What changes, if any, should be made to Section 6.08(c) of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 6.08 is captioned "Specifications Applicable to Connections: Conduit" and is in full accordance with the Pole Attachment Act. Subsection (c) deals with installation of the section of duct or facilities which connect to SWBT's manhole. Formerly, any such installations would have been handled by SWBT or its contractor. Under SWBT's proposal, "authorized contractors" (including AT&T itself as an authorized contractor) selected by AT&T will be able to perform this work if SWBT cannot perform the work in accordance with AT&T's time requirements. Neither the Pole Attachment Act nor regulations thereunder govern this subject. SWBT has added this language to its proposed Master Agreement as a result of negotiations as an accommodation to AT&T and other LSPs, and not because this language is required by law. The provision is reasonable. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

48. What changes, if any, should be made to Section 6.09 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "General Requirements Relating to Personnel, Equipment, Materials, and Public Safety" and is in full accordance with the Pole Attachment Act. The requirements in this section are reciprocal and apply to SWBT as well as to AT&T and other LSPs. Subsection (a) provides that personnel performing work on Applicant's behalf on or in SWBT's poles, ducts, and conduits shall meet the same requirements generally applicable to SWBT and its contractors. Subsection (b) provides that only properly trained persons shall work on, within, or in the vicinity of SWBT's poles, ducts, conduits, and rights-of-way and that the cable system operator or telecommunications carrier on whose behalf the work is being done shall be responsible for determining that such persons have proper

training. These subsections are intended to protect the integrity of the communications facilities of all users sharing SWBT's facilities. Subsection (g) provides that parties using SWBT's poles, ducts, conduits, and rights-of-way not unduly interfere with the rights of property owners, create hazards or nuisances on the property, create unsafe conditions on the premises, etc. Subsection (k) provides that the parties are to establish sufficient safeguards and controls to secure compliance with Section 6.09. None of these provisions, or the remainder of the section, impose unreasonable limitations on any party's access to SWBT's poles, ducts, conduits, or rights-of-way. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

49. What changes, if any, should be made to Section 6.10 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 6.10 is captioned "Specific Requirements Relating to Personnel, Equipment, Materials, and Construction Practices Within or in the Vicinity of SWBT's Conduit Systems" and is in full accordance with the Pole Attachment Act. Subsection (d) provides that AT&T's facilities shall be firmly secured and supported in accordance with Bellcore and industry standards and any applicable construction standards adopted by SWBT and applicable to SWBT's own facilities.

Subsection (h) requires that leak detection liquids and devices used in SWBT's conduit system be of a type approved by SWBT. Subsection (m) deals with the use of spark producing tools, equipment, and devices in SWBT's conduit system. The use of such tools can result in explosions if combustible gases are present in the manhole. Laws, regulations, and ordinance rarely deal with this subject. Accordingly, SWBT expects persons present within its conduit systems to comply with the standards set by SWBT for its own personnel restricting the use of these tools, equipment, and devices. Subsection (n) provides that cable lubricants used in SWBT's conduit system shall be of a type or types approved by SWBT. These provisions are reasonable and nondiscriminatory. JAMES HEARST, REBUTTAL, P. 24-25.

50. What changes, if any, should be made to Section 6.11 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 6.11 is captioned "Opening of Manholes" and is in full accordance with the Pole Attachment Act. Subsection (a) provides that a general rule that manholes will be opened on five working days' notice. Subsection (c) provides that manholes will be opened on shorter notice when there is a need to do so. These provisions are reasonable and do not place undue competitive burdens on AT&T or any other firm entitled to access to SWBT's manholes. In general, nonemergency work in manholes is scheduled and there is no reason why AT&T or any other firm seeking to enter SWBT's manholes should wait until the last minute to advise SWBT of its intent to enter the manhole. In those situations in which faster access is needed, the Agreement contemplates that it will be given. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

51. What changes, if any, should be made to Section 6.12 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 6.12 is captioned "OSHA Compliance" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

52. What changes, if any, should be made to Section 6.13 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 6.13 is captioned "Environmental Contaminants in SWBT's Conduit System" and is in full accordance with the Pole Attachment Act. JAMES HEARST, REBUTTAL, P. 25-26.

53. What changes, if any, should be made to Section 6.14 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 6.14 is captioned "Compliance with Environmental Laws and Regulations" and is in full accordance with the Pole Attachment Act. There is no reason why AT&T should not comply with the environmental laws enumerated in these provisions or comply with reasonable provisions protecting property owners and the public from environmental damage and protecting SWBT from liability resulting from AT&T's conduct. JAMES HEARST, REBUTTAL, P. 25-26.

54. What changes, if any, should be made to Section 6.16 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 6.16 is captioned "Differences in Specifications" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

55. What changes, if any, should be made to Section 7.03 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 7.03 is captioned "Access to Records Relating to SWBT's Poles, Ducts, Conduits, and Rights of Way" and is in full accordance with the Pole Attachment Act. Subsection (a) provides a general rule that access to records will be on 10 business days notice. Subsection (a) also allows expedited access to records (e.g., on two business days notice) when earlier notice is not feasible. As discussed in the testimony of SWBT witness James Hearst, these provisions are reasonable. In general, AT&T and others will have access to records days, weeks, and even months in advance of need. Access to records under SWBT's proposed Master Agreement is not conditioned on specific requests for access. Section 7.03 goes well beyond what is required by federal law. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

56. What changes, if any, should be made to Section 8.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. This section is captioned "Selection of Space" and allows AT&T and others to select the space they will occupy on SWBT's poles and in SWBT's conduits. The remaining language simply calls on AT&T to follow the same space assignment rules which SWBT applies to itself. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

57. What changes, if any, should be made to Section 8.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 8.02 is captioned "Pole, Duct, and Conduit Space Assignments" and is in full accordance with the Pole Attachment Act. Subsection (h) has been added to prevent all parties, including SWBT, from "chaining" space assignments in a manner that ties up facilities for more than 12 months without use. The provision is reasonable and nondiscriminatory. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

58. What changes, if any, should be made to Section 9.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 9.01 is captioned "Licenses Required" and is in full accordance with the Pole Attachment Act. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

59. What changes, if any, should be made to Section 9.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 9.02 is captioned "Application Form" and is in full accordance with the Pole Attachment Act. Subsection (h) reflects changes in SWBT's form agreements to conform to FCC rulings. If and when the FCC permits different rates to be charged from those presently permitted, SWBT would be entitled to adjust rates under this section. At this time, however, since the cable rates and telecommunications rates are the same, the provisions of this section dealing with rates will not be effective. Whether the provisions of this section relating to rates will be operative during the life of

the agreement will depend on FCC rulings. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

60. What changes, if any, should be made to Section 9.05 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 9.05 is captioned "Pre-license survey" and is in full accordance with the Pole Attachment Act. Subsection (a) has been modified from earlier versions to provide that the same field inspection trip required to verify needed make-ready work can also serve as background for SWBT's planning and engineering of the make-ready work to be performed. That is, on one trip, SWBT's engineer not only determines that make-ready work will be required but may gather information necessary to plan the specific make-ready work to be performed. This is more economical to all concerned than making multiple trips. SOUTHWESTERN BELL TELEPHONE COMPANY'S MASTER AGREEMENT.

61. What changes, if any, should be made to Section 10.01 of SWBT's proposed Master Agreement to conform that section to applicable federal law?

SWBT's Position: None. Section 10.01 is captioned "Response Within 45 Days" and is in full accordance with the Pole Attachment Act. Subsection (c) calls on AT&T to let SWBT know if it is no longer interested in the space and includes an example of when SWBT should be notified. Subsection (d) provides that notwithstanding the 45-day response deadline, and subject to applicable make-ready requirements, if any, SWBT will make space available to AT&T for immediate occupancy. That is, SWBT will not wait the full 45-days to advise AT&T that space will be available if the space is both available and ready for immediate occupancy. JAMES HEARST, REBUTTAL, P. 28.

62. What changes, if any, should be made to Section 10.02 of SWBT's proposed Master Agreement to conform that section to applicable federal law?